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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th May 2007

No. 6022—II/1 (BH)-87/1993-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th February 2007 in I. D. Case No. 155 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Secretary, Angul United Central Co-operative Bank, Angul and their cadre employees represented through the Cadre Secretary Employees' Union, Angul United Central Co-operative Bank was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 155 OF 1996

Dated the 8th February 2007

Present:

Shri S. K. Mohapatra, O. S. J. S. (Jr. Br.),
Presiding Officer, Labour Court,
Bhubaneswar.

Between:

The Management of the Secretary,
A. U. C. C. Bank, Angul.

.. First Party—Management

And

Their cadre employees represented
through the Cadre Secretary,
Employees' Union, A. U. C. C. Bank.

.. Second Party—Workmen

Appearances:

None

.. For First Party—Management

Shri S. K. Mishra, Advocate

.. For Second Party—Workmen

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of the Secretary, A. U. C. C. Bank, Angul and their cadre employees represented through the Cadre Secretary Employees' Union, A. U. C. C. Bank under Notification No. 7559-L. E., dated the 27th June 1995 vide memo No. 17083 (5)-L. E., dated the 5th December 1996 for adjudication by this Court.

2. The terms of reference by the State Government is as follow :

"Whether the strikes resorted to by the cadre employees represented by the Cadre Secretary Employees' Union of A. U. C. C. Bank Ltd., Angul for the periods from the 9th March 1992 to the 11th March 1992 and from the 26th March 1992 to the 30th June 1992 are legal and justified ? If so, whether the employees are entitled to wages for the said period ?"

3. The Government of Orissa has referred the present industrial dispute to this Court to decide as to whether the strike resorted by the cadre employees of Angul United Central Co-operative Bank Ltd., Angul (hereinafter referred to as the management) for the period from the 9th March 1992 to the 11th March 1992 and from the 26th March 1992 to the 30th June 1992 are legal and justified and as to whether the cadre employees of the management are entitled to wages for the said period.

4. Shorn of all unnecessary details, the case of the cadre employees (hereinafter referred to as the workmen) of the management is as follows:

The workmen were working as Cadre Secretaries under the management. The workmen formed a Trade Union namely, Angul United Central Co-operative Bank Workers Union in the year 1982 and the said Union was registered vide Registration No. 1403/82. All these workmen were employees of the management Bank and were doing the similar work. As they were not being paid similar salary and they were being discriminated as against the regular employees of the management Bank, the Union of the workmen entered into a tripartite settlement on the 24th March 1984 with the management. Prior to that the Industrial Tribunal, Bhubaneswar in I. D. Case No. 3/85 passed an award under which the management was directed to abide by the tripartite settlement, dated the 24th March 1984. After the said settlement, dated the 24th March 1984 the management submitted a proposal to the Registrar, Co-operative Societies, Orissa seeking approval to implement the terms of the settlement and the said proposal of the management was approved and in pursuant to the said approval, the management passed a Resolution, dated the 28th June 1984 to implement the tripartite settlement, dated the 24th March 1984 and the Award of the Presiding Officer, Industrial Tribunal, Bhubaneswar passed in I. D. Case No. 3/85. In spite of such Resolution, the management did not implement all the terms of the settlement and filed O. J. C. No. 3026 of 1987 before the Hon'ble High Court of Orissa challenging the Award, dated the 27th June 1986 passed in I. D. Case No. 3/85 so far as it relates to the payment of bonus to the Cadre Secretaries. The Hon'ble High Court of Orissa dismissed the writ application of the management by order, dated the 18th December 1991 with an observation that there was relationship of employer and employee between the Bank management and the Cadre Secretaries. The management preferred Special Leave Petition No. 8363 of 1992 in the Hon'ble Apex Court challenging the order of the Hon'ble High Court of Orissa passed in O. J. C. No. 3026 of 1987 but the Special Leave Petition was dismissed by the Hon'ble Apex Court on the 19th January 1993. The management vide orders, dated the 4th October 1988 made the Staff Service Rules of Orissa applicable to the regular employees of the Bank and the same was given effect from the 1st October 1984 under the said Rules, the Grade-II Supervisor of the Bank became Grade-VI employees, but this principle was not applied in the case of Cadre Secretaries violating the terms of the tripartite settlement, dated the 24th March 1984. Therefore,

there was an I. D. Case No. 19/1991 in the Court of Industrial Tribunal, Bhubaneswar which ended in an Award as per the terms of the settlement reached between the management and the Union of the workmen. The management instead of implementing the Award unfairly challenged the same before the Hon'ble High Court of Orissa by filing Writ Application vide O. J. C. No. 3974 of 1992. As the management was in the habit of dragging on the matters by filing litigations and cases in different forums, the Union of the workmen served notice on the management on the 20th February 1992 for disbursement of arrear revised pay in terms of the settlement, dated the 19th November 1991 and for payment of bonus as per the direction of the Hon'ble High Court of Orissa but the management did not pay any heed and therefore, the workmen resorted to peaceful 'Ganadharana' in front of the main gate of the Bank with effect from the 9th March 1992. Thereafter the management assured payment of revised scale within three days and therefore, the workmen re-joined their duty with effect from the 12th March 1992. The Hon'ble High Court of Orissa vide order, dated the 27th May 1992 stayed the operation of the Award dated the 28th December 1991 passed in I. D. Case No. 19/1991. Prior to that the workmen had resorted to strike with effect from the 26th March 1992 when the management failed to implement its assurance for revision of pay scale. The workmen did not have any knowledge of Stay Order passed by the Hon'ble High Court of Orissa. The District Labour Officer, Angul vide his letter, dated the 9th June 1992 informed the Union about the Stay Order without enclosing a copy of the Stay Order of the Hon'ble High Court. Thereafter the Union members went to Cuttack and knew about the truth of the said order and therefore they withdrew the strike with effect from the 1st July 1992. It is contended by the workmen that the management had provoked the cadre employees to resort to strike.

5. The management has been set *ex parte*. One of the Cadre Secretaries of Angul United Central Co-operative Bank Ltd. examined as W. W. 1 and in his evidence he has deposed about the facts narrated in the statement of claim and has proved documents Exts. 1 to 20. According to W. W. 1 the Union of the workmen was constrained to go on peaceful agitation as because the management did not fulfil their legitimate demands. From the oral evidence of W. W. 1 coupled with the document Exts. 1 to 20, it is evident that the Union of the workmen resorted to strike as because the management did not implement the Award, dated the 28th December 1991 passed by the Industrial Tribunal, Bhubaneswar in I. D. Case No. 19/1991 after the management and the workmen reached a settlement vide Ext. 14 in Form 'K' and filed a petition before the Industrial Tribunal, Bhubaneswar vide Ext. 15 for passing an Award in terms of Ext. 14. Ext. 14 was signed by both the parties on the 19th November 1991 and as the management did not implement the agreement (settlement) Ext. 14, the Union of the workmen resorted to strike from the 9th March 1992 to the 11th March 1992 and again from the 26th March 1992 to the 30th June 1992. Now the question arises as to whether these two strikes were legal and justified. Section 22 of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act) reads as follows.

"Prohibition of strikes and lockouts"—(1) No person employed in a public utility service shall go on strike in breach of contract,—

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking.
- (b) within fourteen days of giving such notice; or
- (c) before the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

Admittedly the Bank service is a public utility service and therefore, Section 22 of the I. D. Act, applies. From a plain reading of Section 22 of the I. D. Act it is clear that giving notice by the employees to the employer as stipulated in Section 22 of the I. D. Act is mandatory. In his evidence W. W. 1 has stated that the Union had given a notice of strike

on the 20th February 1992 and as because the management turned a deaf-ear the Cadre Secretaries went on strike from the 9th March 1992 to the 12th March 1992 in one phase and has further stated that the strike was called off on the 12th March 1992 as because the management assured to pay all the dues but when the assurance was not carried out the workmen again went on strike on the 26th March 1992. Although the alleged notice, dated the 29th February 1992 has not been proved in this case, the evidence of W. W. 1 that such a notice had been given to the management on the 20th February 1992 goes unchallenged as because the management in the instant case had been set *ex parte* and the evidence of W. W. 1 remains unchallenged. Therefore, the period of strike from the 9th March 1992 to the 12th March 1992 must be held to be legal.

6. As regards the period of strike for the period from the 26th March 1992 to the 30th June 1992, there is absolutely no evidence on record to show that the Union had sent any mandatory notice to the employer under Section 22 of the Industrial Disputes Act before resorting to strike, dated the 26th March 1992. The force of alleged notice, dated the 20th February 1992 was no more there after the workers called off the strike on the 12th March 1992 as stated by W. W. 1 in his evidence. This fact has also been pleaded by the workmen in their statement of claim. Before the workmen resorted to a fresh strike with effect from the 26th March 1992 which lasted till the 30th June 1992. They were required to give a fresh notice again in terms with the Section 22 of the Industrial Disputes Act. Since in the instant case the workmen have never done so by issuing a fresh notice for resorting to strike with effect from the 26th March 1992, the period of strike between the period the 26th March 1992 to the 30th June 1992 is held to be illegal and unjustified and therefore, the employees are entitled to the wages for the period from the 9th March 1992 to the 12th March 1992 only and not for the period from the 26th March 1992 to the 30th June 1992 by giving a single notice, dated the 20th February 1992 it was not open for the workmen to resort to strike in two phases. After the first phase of strike was called off on the 12th March 1992 the alleged notice, dated the 20th February 1992 was spent force, and therefore, a fresh notice was required to go on strike with effect from the 26th March 1992.

7. Hence, ordered :

In view of the discussion made above, the strike resorted to by the cadre employees represented by the Cadre Secretary Employees' Union of Angul United Central Co-operative Bank Ltd., Angul for the periods from the 9th March 1992 to the 11th March 1992 is held to be legal and justified and therefore, the employees are entitled to the wages for the period from the 9th March 1992 to the 11th March 1992. But the strike for the period from the 26th March 1992 to the 30th June 1992 is held to be illegal and unjustified and therefore, the employees are not entitled to the wages for the period from the 26th March 1992 to the 30th June 1992.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA

8-2-2007

Presiding Officer, Labour Court
Bhubaneswar

S. K. MOHAPATRA

8-2-2007

Presiding Officer, Labour Court
Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government